

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE**

**MVM, INCORPORATED
Employer**

and

Case 5-RC-15873

**INTERNATIONAL UNION, SECURITY,
POLICE & FIRE PROFESSIONALS OF
AMERICA (SPFPA)
Petitioner**

and

**UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA LOCAL 80
Intervenor**

DECISION AND DIRECTION OF ELECTION

ISSUES

Two issues are raised by the Intervenor in this proceeding: (1) whether the petition, filed on June 1, 2005, is barred by the existing collective-bargaining agreement between the Employer and the Intervenor which, by its terms, is effective from July 31, 2002 until midnight on September 30, 2005; and (2) whether Petitioner is disqualified from representing the petitioned-for unit of court of court security officers and special security officers by virtue of Petitioner's continuing representation, at the same locations of lead court security officers and lead special security officers all, of whom the Intervenor alleges to be supervisors.¹

CONCLUSIONS

For the reasons that follow in this decision, and after careful consideration of the totality of the record evidence and the Petitioner's and Intervenor's respective factual and legal positions as stated in their post-hearing briefs, I find: (1) the petition was timely

¹ For the purposes of this case, the difference between court security officers and special security officers is immaterial. The difference is one of assignment: if a security officer is assigned to a courthouse, he is a court security officer; if a security officer is assigned to a non-courthouse site, he is a special security officer. Because the distinction is immaterial, lead court security officers and lead special security officers will both be referred to as "lead" and court security officers and special security officers will be referred to as "security officers."

filed; and (2) the Intervenor has met its burden of proof establishing that the lead security officers are supervisors within the meaning of the Act, but there is no *per se* evidence in the record warranting the Petitioner's disqualification.²

The Parties stipulated that in the event an election is directed the appropriate unit for the election is as follows:

All full-time and regular shared position United States Marshal Service credentialed court security officers and special security officers assigned to the federal court houses and other United States Justice Department office buildings pursuant to the Employer's contract with the United States Marshal Service for security within the jurisdictional boundaries of the 12th Circuit, but excluding all managers, supervisors as defined by the National Labor Relations Act, office and/or clerical employees, lead court security officers or lead special security officers, temporarily assigned employees and substitute employees.³

There are approximately 220 employees in the petitioned for unit.

There is a history of collective-bargaining between the Intervenor and the Employer and/or predecessor employers. In collective-bargaining agreements dating back to 1997 between the Intervenor and the Employer, or predecessor employers, the security officers in the 12th Circuit were always in a separate unit from lead security officers in the 12th Circuit. On or about February 18, 1998, a predecessor employer, AKAL, requested by written letter that the Intervenor agree to include the leads in the same unit as the security officers. Intervenor refused the request at that time because of the leads' role in reporting infractions by security officers.

There is also a history of collective-bargaining between the Petitioner and/or predecessor labor organizations and the Employer. The current collective-bargaining agreement covering lead security officers confirms that the leads are in a separate bargaining unit from the security officers. The Petitioner was certified as the exclusive collective-bargaining representative in NLRB Case 5-RC-15390.⁴

² I have read and reviewed the record evidence, exhibits, Petitioner's and Intervenor's briefs and the cited case law carefully. My omission of other specific and relevant pieces of evidence or case law from my analyses in this Decision and Direction of Election should not be taken, nor construed as, an indication that I have not considered it in reaching my findings and conclusions.

³ The parties stipulated at the hearing that the sites involved herein are the U.S. Marshal's office, main building; U.S. Attorney's office, main building; U.S. Tax Court; U.S. Court of Appeals; U.S. Court of Claims; U.S. District Court for the District of Columbia; Federal Drug Czar's office; U.S. Court of Appeals for Armed Forces; U.S. Court of Veteran Appeals; and an undisclosed safe house in the jurisdiction used by the U.S. Marshal Service.

⁴ In that case, an election was held under my supervision pursuant to a Stipulated Election Agreement between the Employer and the Petitioner. Consistent with their positions here, neither the Employer nor the Petitioner raised the issue of the leads' supervisory status in 5-RC-15390.

INTERVENOR'S POSITION

Intervenor contends that a contract bar exists which operates to bar the instant petition filed on June 1, 2005. Intervenor asserts its current collective-bargaining agreement with the Employer for the same unit involved herein became effective on July 31, 2002. Under the Board's contract bar policies, this agreement would bar a representation petition unless the petition were filed in advance of the 60-day insulated period. Intervenor calculates the June 1, 2005 filing date as being within the insulated period by one day. Intervenor also contends that because the Petitioner currently represents at the same locations lead security officers whom Intervenor alleges are supervisors of the Employer, under *Sierra Vista Hospital, Inc.*, 241 NLRB 631 (1979), Petitioner should be disqualified from representing the petitioned-for unit of employees.

Intervenor called Ava Lorraine Ramey, a security officer and Local 80's president; and John Daniel Perkin, a security officer and Local 80's vice-president and chief shop steward, as witnesses at the hearing.

PETITIONER'S POSITION

Petitioner contends that under *Union Carbide*, 190 NLRB 191 (1971), *Vanity Fair Mills*, 256 NLRB 1104 (1981), and NLRB Form 4645, it filed the petition timely on June 1, 2005, on the last day of the "open" or "window" period. Petitioner further contends that the lead security officers are not supervisors as defined in the Act and, as a result, Petitioner should not be disqualified from representing the petitioned-for employees.

Petitioner called no witnesses at the hearing.

EMPLOYER'S POSITION

The Employer takes no position on the contract bar issue except to acknowledge that its current collective-bargaining agreement with the Intervenor became effective on July 31, 2002. The Employer contends that lead security officers are not supervisors as defined in the Act.

At the hearing, Employer called Issac S. Smith, Jr., a site supervisor.

EMPLOYER'S BUSINESS OPERATIONS

The Employer is a California corporation with offices and places of business in the District of Columbia. By contract with the U.S. Marshal's Service, the Employer provides U.S. Marshal Service credentialed security officers who are assigned to posts at the various site locations, all of which are federal courthouses or other U.S. Justice Department-related buildings in the 12th Circuit.

The U.S. Marshal Service provides a contract manager or COTR (Contracting Officer Technical Representative) for each of the contracted sites. The COTR is always a

government representative, and usually, but not always, the COTR is a deputy U.S. Marshal. In some instances, the COTR is an employee of the respective court building. The COTR acts as a liaison for his respective site between the U.S. Marshal Service and the Site Supervisor of the Employer.⁵

The Employer has one contract manager, also known as a project manager, for all of the 12th Circuit contracted sites. The Employer's project manager oversees the entirety of the administration of the 12th Circuit contract and all operations covered by the contract. The parties stipulated the contract manager or project manager is a statutory supervisor of the Employer.

The Employer has five Site Supervisors. The parties stipulated that the Site Supervisors are supervisors as defined in the Act. The Employer currently provides guard services at ten or more locations; obviously, therefore, not every site has a Site Supervisor physically present. In general terms, the Site Supervisor oversees the daily security operations at his respective site. In specific terms, the Site Supervisor hires court security officers; makes the post orders, e.g. assigns security officers to the various posts within his building; handles and adjusts grievances; grants leave; investigates infractions; and metes out discipline. The Site Supervisor receives reports from the lead security officers along with their recommendations. The Site Supervisors are available and/or on-call 24 hours a day.

There are approximately 30 lead security officers employed by the Employer in the 12th Circuit. Leads are involved in carrying out the same specific duties as the Site Supervisors, but the role of the leads in these areas is more limited than the Site Supervisors. Leads stand a post for about two hours of their shift and their remaining six hours is spent frequenting other posts and inspecting those posts to be sure there are a sufficient number of security officers present, the security officers are uniformed properly, and the security equipment, such as radios and x-ray machines, is in good working order. Any irregularities or infractions are reported orally or in writing to the Site Supervisor. Lead security officers are also responsible for providing support to security officers when incidents arise and for resolving complaints from the public and some work-related grievances from employees.

The security officers are responsible for manning the assigned posts, monitoring and enforcing security at their posts, and conducting themselves in accordance with the policies and procedures established by the U.S. Marshal's Service or COTR such as being in proper uniform. Security is enforced around the outside perimeters of the various buildings, inside the building at various "choke" points or posts, and inside the courtrooms themselves.

⁵ None of the parties asserts a single or joint employer relationship between the Employer and the U.S. Marshal Service.

CONTRACT BAR AND INSULATED PERIOD POLICIES

I find Petitioner timely filed its representation petition on June 1, 2005, the last day of the 30 day “open” or “window” period before the 60 day insulated period commenced under the Board’s contract bar policy. The controlling cases are *Vanity Fair Mills, Inc.*, 256 NLRB 1104 (1981); *Union Carbide Corp.*, 190 NLRB 191 (1971); *General Cable Corp.*, 139 NLRB 1123 (1962); and *Pacific Coast Ass’n of Pulp and Paper Mfrgs.*, 121 NLRB 990 (1958). I will address these cases in reverse order.

In *Pacific Coast*, the collective-bargaining agreement which operated as a bar had effective dates of June 1, 1955 to May 31, 1960, and the petition was filed April 24, 1957. The Board dismissed as untimely the petition there, under the two-year contract bar rule then in effect. In dismissing the petition, the Board remarked that the petition would have been timely had it been filed 150 to 60 days “before the date on which the contract would have been in effect for two years.” *Id.* at 994. (Emphasis added.)

In *General Cable*, the particular facts of that case did not require the Board to provide an exact rule for the calculation of the contract bar period, that is, what dates are counted and how. Consequently, the Board only stated:

[c]ontracts of definite duration for up to 3 years will bar an election for their entire period; contracts with longer fixed terms will be treated for bar purposes as 3-year agreements and will preclude an election for only their initial 3 years.

Id. at 1125.

In *Union Carbide*, the Board offered more specific instruction. There, the collective-bargaining agreement was effective for more than 3 years, from July 1, 1967 to October 15, 1970, and the petition was filed August 6, 1970. In dismissing the petition as untimely for not being filed during the “open” period, the Board treated the contract as a 3-year bar and calculated the “open” period as commencing “90 to 60 days prior to the third anniversary date rather than the expiration date designated in the contract.” *Id.* at 191. (Emphasis added.)

It is in *Vanity Fair* that the Board clearly and distinctly explains its calculations of the contract bar and the “open period.” There, the collective-bargaining agreement had effective dates of October 2, 1977 through December 15, 1980. The Board observed first that the “open” period runs

from 60 to 90 days prior to the expiration date of the existing contract during which period the existence of the contract will not act as a bar to a petition for an election within the unit covered by the contract.

Id. at 1105, citing *Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962). Then, the Board observed “likewise” that

when an existing collective-bargaining agreement has a fixed term of more than 3 years, the 60-90 day open period for the filing of petitions for election is measured from the *third anniversary date of the start of the contract* and not from the expiration date of the contract, and the 60-day insulated period is likewise the 60 days immediately preceding the third anniversary of the contract, and not the 60 days immediately preceding the expiration of the contract.

Id. citing *General Cable, Pacific Coast*, and *Union Carbide*. (Emphasis in original.) Applying this principle to the facts of *Vanity Fair*, the Board stated the

contract would only act as a bar during the first 3 years of its term, through October 2, 1980, and the 60 to 90 day open period during which petitions could be properly filed would be July 5 – August 3, as measured from the third anniversary date of the start of the contract.

Id. (Emphasis added.)

Here, the existing collective-bargaining agreement by its terms is effective from July 31, 2002 until midnight September 30, 2005.⁶ There is no dispute the petition was filed on June 1, 2005. Applying the second principle of contract bar from *Vanity Fair*, here there is a contract with a fixed term of more than 3 years which will act only as a bar during the first 3 years of its term, through July 31, 2005. It follows then that the 60 to 90 day “open” or “window” period, as measured from the third anniversary date of the start of the contract, would be May 3, 2005 through June 1, 2005. As the petition was filed June 1, 2005, the petition is timely filed.⁷

SUPERVISORY STATUS OF LEAD SECURITY OFFICERS

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

⁶ I conclude that the beginning effective date of the existing collective-bargaining agreement is July 31, 2002. On its face and by its express terms, the collective-bargaining agreement does not make ratification a condition precedent to its validity. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). That the Intervenor’s and Employer’s negotiators and executors may have viewed the agreement as tentative until ratified is parol evidence and immaterial and irrelevant to the issue of the agreement’s validity pending ratification. *Gate City Optical Co.*, 175 NLRB 1059 (1969). Further, it is the agreement’s effective date, not the date of execution, that is controlling. *Buy Low Supermarket, Inc.*, 131 NLRB 23 (1961). For these reasons, I reject the Petitioner’s argument that the effective date of the agreement is August 6, 2002, the date of Ramey’s execution following ratification. As evidenced by the express language on the cover of the agreement and Article 21, I conclude that the expiration date is September 30, 2005 as agreed to at the hearing by the Intervenor and the Employer.

⁷ Intervenor argues in its brief that the “anniversary date” terminology used by the Board in cases such as those cited above is based on “confusion” beginning with “misstated dicta” in *Mutual Shoe Co.*, 124 NLRB 943, 944 (1959). In view of the clear holding in *Vanity Fair*, which involved almost the identical issue as that presented here, Intervenor’s argument properly is addressed to the Board.

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed-out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party alleging an individual is a statutory supervisor bears the burden of establishing that individual's supervisory status. *NLRB v. Kentucky River Community Care, Inc.*, 121 S. Ct. 1861, 1867 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

Regarding the supervisory status of the lead security officers, I find that the Intervenor has met its burden of establishing the lead security officers are statutory supervisors: lead security officers possess and exercise the authority to assign and direct the security officers; discipline and/or effectively recommend discipline for the security officers; and exercise personal discretion in so doing.

That lead security officers are authorized to use their discretion in assigning and directing the security officers is manifest in the contract between the U.S. Marshal Service and the Employer for the 12th Circuit. This contract specifically authorizes the

leads to coordinate the daily security operations at the site directly with the COTR and authorizes leads “to determine any changes which may be required.” This contract also delegates the lead security officers as the first line of supervision. That leads utilize this discretion is manifest in the fact that the leads only stand a post for two hours of an eight-hour shift, and spend their remaining time patrolling other posts and performing inspections to ensure those posts have a sufficient number of security officers, that security officers are properly uniformed and duly discharging their duties, and that security equipment is in good working order. Leads give orders and instructions to security officers in the performance of the officers’ work. *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972); *Little Rock Hardboard Co.*, 140 NLRB 264, 265 (1962).

When the leads observe any violation or infractions, they are authorized to verbally counsel or warn the offending security officer. In enforcing the security policies and procedures against the security officers, the leads are authorized to give the security officers orders to determine if they are in compliance with those policies and procedures. *Venture Industries*, 327 NLRB 1056 (1999); *Lee-Rowan Mfrg. Co.*, 129 NLRB 980, 984 (1960). If the security officer does not obey the lead’s orders, the security officer may be brought up on charges of insubordination or dereliction of duty and disciplined. In bringing charges against a security officer, a lead may file an oral or written report with the Site Supervisor. The written reports are placed in the offending officer’s personnel file. Two written charge reports by a lead against a security officer within a year automatically results in the security officer’s termination. There is no record evidence that the lead security officer must check with the Site Supervisor or the COTR before verbally counseling a security officer or issuing orders to the officer.

Leads also effectively recommend discipline for infractions and violations to the Site Supervisors. I find particularly telling the record testimony concerning lead Wilbert Jefferson’s written report to Site Supervisor Goode Mott regarding security officer Brooks’ desertion of his post on or about August 6, 1999. The record is clear that the Site Supervisor adopted lead Jefferson’s recommendation without conducting an independent investigation and assessment. *Elliott-Williams Co.*, 143 NLRB 811, 816 (1963). I also find this instance and other similar instances of leads effectively recommending discipline particularly telling because they have historically and routinely resulted in grievances filed by the Intervenor against the leads and the Employer.

That the lead security officers utilize independent judgment in assigning and directing the security officers is further evidenced by their scheduling of security officers at the various posts. The number of security officers to be assigned to each post, and the hours security officers will be present, are established by “post orders.” The post orders are created by the COTR and the Site Supervisor, with the input of the leads who advise how many security officers are needed at a given post. Once the post orders are established, it is the lead security officers, alone, who determine which security officers will be assigned to each post and shift. In addition to this assignment of security officers to their permanent posts, leads also are responsible on a daily basis for assigning security officers who do not have permanent station to specific posts. Further, when a security officer assigned to a post but has to leave the post for an authorized reason such as

illness, it is the lead who “shuffles” or reassigns the security officers as needed to ensure all the posts are adequately manned. In so doing, the leads utilize independent judgment to determine who is going to be reassigned and what staffing levels will be maintained at the various posts. *Greenbrier Hotel*, 216 NLRB 721, 723 (1975).

Site Supervisors work only at certain sites and only on day shift; at all other times and at all other facilities, the lead security officer is the Employer’s highest authority working at the site. *Pennsylvania Truck Lines*, 199 NLRB 641, 642 (1972).

In sum, the totality of the record evidence persuades me that the leads possess primary indicia of supervisory status and exercise independent judgment in assigning and directing the work force, issuing discipline, and effectively recommending discipline.

My finding that the leads are supervisors is strongly supported by the secondary indicia. If the leads are not supervisors, the ratio of supervisors to employees is about 6 to 250, or 1 to 42. If the leads are supervisors, the ratio becomes about 36 to 220, or 1 to 8. *Pennsylvania Truck Lines*, *supra*. In addition, the leads are designated and referred to as supervisors by the U.S. Marshals, the leads themselves, and the security officers. *Poly-America, Inc.*, 328 NLRB 997 (1999). The record is clear that the U.S. Marshals and Deputy U.S. Marshals at a site interact with a lead in order to resolve security incidents and situations. In briefing the security officers, leads advise the officers that if a security incident arises, they should contact a lead. The record is also clear the leads, in fact, resolve security situations with, and complaints from, the public. When a U.S. Marshal or a member of the public requests to speak with a security officer’s supervisor, the officer invariably calls for his lead. *Bama Co.*, 145 NLRB 1141 (1964). At the request of the U.S. Marshal Service, the leads at some of the sites wear identification badges that designate them as “supervisor.” Security officers also wear identification badges, but those badges do not designate them as supervisors. Other than this, the uniforms worn by the leads and the security officers are the same. At least at one of these locations, the leads have a separate locker room from the security officers’. Historically, the leads have always been in a separate unit from the security officers. It is undisputed that leads are paid a higher wage than security officers. In the absence of a Site Supervisor, leads, and only leads, are appointed as acting site supervisors.

Although I find the lead security officers are supervisors as defined in the Act, I further find that Intervenor has not met its heavy burden to establish that the Petitioner should be disqualified from representing the petitioned-for unit simply because it already represents a unit of lead security officers at these locations within the 12th Circuit. The seminal case on this issue is *Sierra Vista Hospital*, 241 NLRB 631 (1979). There, the Board articulated the test for determining whether membership and participation of supervisors disqualified a union from being certified as the exclusive collective-bargaining representative under Sec. 9 of the Act. Disqualification results if the supervisors are in a role of authority in the union and the party urging disqualification establishes there is a clear and present danger of a conflict of interest which would affect the union’s ability to single-mindedly represent the unit employees. *Id.*; *Sidney Farber Cancer Institute*, 247 NLRB 1 (1980). Here, the record simply establishes that Petitioner

represents the lead security officers in the 12th Circuit. There is not a scintilla of record evidence that the lead security officers are in a position of control or authority within the Intervenor, such that a conflict would arise impairing the Intervenor's ability to single-mindedly represent the security officers. In so finding, I note that the leads are currently in a separate unit from the petitioned-for security officers. Without specific evidence of a clear and present danger of conflict, I would be imposing a *per se* rule of disqualification, contrary to current Board law. I decline to do so.

Accordingly, given the record here in the instant matter, I will direct an election in which security officers may choose to be represented by the Petitioner or the Intervenor, or by neither.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, International Union, Security, Police & Fire Professionals of America (SPFPA) is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.
4. The Intervenor, United Government Security Officers of America Local 80, is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.
5. There is a prior history of collective-bargaining between the Petitioner and the Employer and the Intervenor and the Employer.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
7. The parties stipulated that the Employer, MVM, Inc. is a California corporation with offices and places of business in the District of Columbia and is engaged in the business of providing security services. During the past twelve (12) months, a representative period, the Employer provided services valued in excess of \$50,000 in states other than the State of California.

8. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular shared position United States Marshal Service credentialed court security officers and special security officers assigned to the federal courthouses and other United States Justice Department office buildings pursuant to the Employer's contract with the United States Marshal Service for security within the jurisdictional boundaries of the 12th Circuit, but excluding all managers, supervisors as defined by the National Labor Relations Act, office and/or clerical employees, lead court security officers and lead special security officers, temporarily assigned employees and substitute employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **INTERNATIONAL UNION, SECURITY, POLICE & FIRE PROFESSIONALS OF AMERICA (SPFPA)** or **UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA LOCAL 80** or **NEITHER**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before July 8, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D. Notice of Electronic Filing

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the

Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., E.D.T. on July 15, 2005. The request may not be filed by facsimile.

(SEAL)

/s/WAYNE R. GOLD

Dated: July 1, 2005

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202